

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

BRYAN WEINGARTEN

CRIM. NO. 13-109

ORDER

AND NOW, this ____ day of _____, 2013, after consideration of the Motion to Intervene and Unseal Judicial Records, and any response thereto, IT IS HEREBY ORDERED that the Motion is GRANTED, and Laurence Shiekman is granted leave to intervene for the limited purpose of seeking access to judicial records and proceedings.

IT FURTHER IS ORDERED THAT the Clerk of Court is directed to make accessible to the public the docket entries in this case and the following documents which have been filed in this matter.

BY THE COURT:

Legrome D. Davis, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

BRYAN WEINGARTEN

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CRIM. NO. 13-109

MOTION TO INTERVENE AND UNSEAL JUDICIAL RECORDS

Laurence Shiekman, an investor in a company operated by defendant Bryan Weingarten, moves for leave to intervene in this matter for the limited purpose of seeking access to judicial records. As explained in the accompanying memorandum of law, based on the public's common law right of access to judicial proceedings and records, United States v. Wecht, 537 F.3d 222, 233 (3d Cir. 2008) (reviewing the right of access jurisprudence of the Supreme Court and the Third Circuit and concluding that the district court erred by refusing to disclose juror names), Mr. Shiekman respectfully requests that this Court unseal the docket entries, the criminal information, the guilty plea memorandum, and other records filed in this case (with the exception of documents appropriately sealed to protect compelling government interests).

WHEREFORE, Mr. Shiekman respectfully requests that the Court grant it leave to intervene and unseal judicial records.

Dated: July 22, 2013

Respectfully Submitted,

/s/ Michael A. Schwartz

Michael A. Schwartz (PA 60234)

PEPPER HAMILTON LLP

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CRIM. NO. 13-109

This is a criminal tax case in which the United States Attorney's Office announced on its public website a notice that a guilty plea hearing had been scheduled on April 10, 2013 before the Honorable Mitchell S. Goldberg. Presumably, because one or both of the parties requested a sealing order, neither the docket regarding this case or any of the filed documents, including the criminal information, plea agreement, the government's guilty plea memorandum, motion to seal, or Court orders, are publicly available. As explained in this memorandum, there are no longer any compelling reasons to keep the docket entries and all of the filings in this case under seal. On behalf of Laurence Shiekman, who, as a member of the public, has a constitutional and common law right of access to

criminal proceedings, we respectfully request that this Court grant the motion to intervene and unseal these records. See United States v. Wecht, 537 F.3d 222, 233 (3d Cir. 2008) (reviewing the right of access jurisprudence of the Supreme Court and the Third Circuit and concluding that the district court erred by refusing to disclose juror names); Goldstein v. Forbes, 260 F.3d 183, 192 (3d Cir. 2001) ("It is well settled that there exists, in both criminal and civil cases, a common law public right of access to judicial proceedings and records.").

STANDING

Laurence Shiekman is an investor in a company, WP Realty. Defendant Bryan Weingarten, who serves as WP Realty's Chief Executive Officer, sent a letter, dated March 5, 2013, to Mr. Shiekman and other WP Realty investors, stating: "I am entering a guilty plea to filing false personal income tax returns for the years 2006 to 2008. I have cooperated fully with the IRS, paid all taxes due, and accept all personal responsibility for my actions." (attached as Exhibit A).

As the Supreme Court has held, all members of the public (especially those such as Mr. Shiekman who have business dealings with a defendant in a federal criminal matter) must be given a right to be heard on the question of their exclusion from court records, Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 609 n.25 (1982). The Third Circuit has made clear that the "procedural device of permissive intervention is appropriately used to enable a litigant who was

not an original party to an action to challenge protective or confidentiality order entered in that action.” Pansy v. Borough of Stroudsburg, 23 F.3d 772, 778 (3d Cir. 1994). Accordingly, Mr. Shiekman has standing to bring this motion to intervene.

FACTUAL BACKGROUND

On April 10, 2013, the United States Attorney’s Office published on its website a notice that a guilty plea hearing had been scheduled for 3:00 pm that day before the Honorable Judge Mitchell Goldberg in United States v. Bryan Weingarten, Criminal Number 13-109, which the U.S. Attorney’s Office described as a “Tax Fraud” matter. Mr. Weingarten’s guilty plea hearing was held in open court, and a member of the public was present that day, watching the entire change of plea proceeding.

After Mr. Weingarten’s hearing, the record was sealed, and we unsuccessfully attempted to resolve the matter with AUSA Nicole Phillips and defense counsel, Thomas Bergstrom. However, Mr. Bergstrom confirmed in an email, dated June 14, 2013, that Mr. Weingarten pled guilty to tax fraud charges, all owed taxes were paid in full, and Mr. Weingarten was cooperating with the government. (attached as Exhibit B).

ARGUMENT

Given the public proceedings, the public disclosure of the nature of the charges in this case, and the nature of Mr. Weingarten's cooperation, there are no longer any compelling reasons to keep the docket entries and all of the filings in this case under seal. See United States v. Smith, 776 F.2d 1104, 1112-13 (3d Cir. 1985) (right of access can be outweighed only by a compelling interest "narrowly tailored to serve that interest" ... "the Third Circuit has been less inclined to protect a party's privacy if the information sought to be protected is already publicly available ").

Here, even before Mr. Weingarten pled guilty, he announced to investors in his company that he was pleading guilty to filing false tax returns, cooperated fully with the IRS, paid all taxes due, and accepted personal responsibility for his actions. Then, the United States Attorney's Office published on its website a notice of the guilty plea hearing, announcing the docket number, assigned prosecutor, courtroom location, and type of case. A member of the public was present in Court that day and watched the entire change of plea proceeding. Finally, as stated above, Mr. Weingarten's counsel confirmed that he pled guilty to these tax charges and is cooperating with the government.

Under these circumstances, even if there were appropriate grounds to seal the docket and filings at some point in time, there no longer appear to be any

compelling reasons why the docket, the criminal information, the guilty plea memorandum, and other records should remain under seal. See United States v. Konrad, No. 11-15, 2011 U.S. Dist. LEXIS 43206 at *23 (E.D. Pa. Apr. 19, 2011) ("In light of the Third Circuit's holding in Smith I regarding the presumption of access to charging documents, this Court finds a strong presumption of access must attach to the Information filed by the Government in this case. This decision is in keeping with the 'historic tradition' of promoting transparency and accountability through public scrutiny of charging documents, which provides benefits to both the public and each individual defendant.").

CONCLUSION

For the foregoing reasons, we respectfully request that the Court grant the motion to intervene and unseal all records in this matter.

Dated: July 22, 2013

Respectfully Submitted,

/s/ Michael A. Schwartz
Michael A. Schwartz (PA 60234)
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EXHIBIT A

WP • REALTY

March 5, 2013

Mr. Laurence Z. Shiekman
2307 N. Grant Avenue
Wilmington, DE 19806

Re: Investment of Laurence Z. Shiekman

Dear Larry:

I am writing to inform you of a significant personal development soon to be made public and to explain that it is only personal and does not impact any of the Funds or properties managed by WP Realty. I am entering a guilty plea to filing false personal income tax returns for the years 2006 to 2008. I have cooperated fully with the IRS, paid all taxes due, and accept all personal responsibility for my actions.

I want to state unequivocally that neither WP Realty nor any of the projects managed by it have any liability resulting from these strictly personal tax issues. The fund assets will continue to be professionally managed at the highest levels and standards by the WP Management Team. The employee base of WP Realty remains intact and fully capable of ably carrying out WP Realty's management duties. We have a strong, experienced team of over fifty employees with an average of ten years of service at the Company and over twenty years in the real estate industry. We are also actively searching for a seasoned and accomplished director of asset management to assist us.

I and the rest of the WP Management team are dedicated and committed to maximizing your return on investments, and deeply appreciate your continued confidence and support.

Sincerely,



Bryan S. Weingarten
Chief Executive Officer

EXHIBIT B

Schwartz, Michael A.

From: Bergstrom, Thomas A. <thomas.bergstrom@bipc.com>
Sent: Friday, June 14, 2013 8:37 AM
To: Schwartz, Michael A.
Subject: RE: U.S. v. Bryan Weingarten

Follow Up Flag: Follow up
Flag Status: Flagged

I am only authorized to tell you what I have already told you, which is that Mr. Weingarten has plead guilty to filing false tax returns(1040) for the years 06, 07,08; that all taxes due and owing have been paid in full and that his conduct did not involve the company in any way. I have also advised he is cooperating with the government, which you rightly surmised.
Tom

From: Schwartz, Michael A. [mailto:schwarma@pepperlaw.com]
Sent: Friday, June 14, 2013 8:22 AM
To: Bergstrom, Thomas A.
Subject: RE: U.S. v. Bryan Weingarten

Tom,

Have you been able to talk to Mr. Weingarten about our request?

Mike

Michael A. Schwartz
Pepper Hamilton LLP
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From: Schwartz, Michael A.
Sent: Thursday, May 23, 2013 7:49 PM
To: Thomas A. Bergstrom (thomas.bergstrom@bipc.com)
Subject: FW: U.S. v. Bryan Weingarten

Tom,

I wanted to follow up on our conversation the other week. Have you been able to talk to Mr. Weingarten about our request for copies of the information, guilty plea memorandum, and any other documents filed in the case other than the plea agreement (which I understand there may be reasons to keep under seal)?

Regards,

Mike

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From: Phillips, Andrea (USAPAE) 2 [<mailto:Andrea.Phillips@usdoj.gov>]
Sent: Monday, April 29, 2013 8:09 PM
To: Schwartz, Michael A.
Subject: RE: U.S. v. Bryan Weingarten

Hi Mr. Schwartz:

I have spoken to Mr. Weingarten's attorney, Tom Bergstrom regarding your request. He said that you can contact him directly with your questions. You can reach him at 215-665-3955.

As the matter is under seal, I don't have a document that I can share with you.

Regards,
Nicole

From: Schwartz, Michael A. [<mailto:schwartzma@pepperlaw.com>]
Sent: Monday, April 29, 2013 8:02 PM
To: Phillips, Andrea (USAPAE) 2
Subject: RE: U.S. v. Bryan Weingarten

Nicole,

I just wanted to follow up on this request. I look forward to discuss this with you.

Regards,

Mike

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From: Schwartz, Michael A.
Sent: Monday, April 22, 2013 3:48 PM

To: 'A. Nicole Phillips (andrea.phillips@usdoj.gov)'

Subject: U.S. v. Bryan Weingarten

Nicole,

As I mentioned on my voicemail message, I am inquiring about the guilty plea which was entered by Mr. Weingarten on April 10, 2013. This matter was listed on the U.S. Attorney's website, and I am aware of someone who was not a party in the matter who was present in court for the plea.

For some reason, there is no docket report available for this case. While I understand that there may be circumstances in which a guilty plea agreement is sealed, generally the information/indictment, docket, and other related filings are publicly available. Mr. Weingarten informed a number of investors that he was pleading guilty to tax charges. Those investors are interested in seeing the charges to evaluate whether Mr. Weingarten's plea could have an effect on their investments.

Can you please send me the charge and any other publicly available information (including any sealing orders)? If the entire case is sealed, can we discuss whether certain items can be unsealed, especially given the fact that the plea was announced publicly, that the hearing took place in an open courtroom, and that Mr. Weingarten informed investors that he would be entering the plea.

I look forward to discussing this with you.

Regards,

Mike

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CERTIFICATE OF SERVICE

I, Michael A. Schwartz, hereby certify that on July 22, 2013, I caused a true and correct copy of the foregoing Motion to Intervene and accompanying papers to be served by email upon the following:

A. Nicole Phillips, Esquire
Assistant U.S. Attorney
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Thomas Bergstrom, Esquire
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/s/ Michael A. Schwartz
Michael A. Schwartz